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**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF MONTANA**  
**MISSOULA DIVISION**

UNITED STATES OF AMERICA,  Plaintiff,  vs.  WILLIAM RICHARD NIELSEN,  Defendant.	<b>Case No. CR 11-08-M-DWM</b>  <b>BRIEF IN SUPPORT OF MOTION TO ENLARGE TIME FOR ADDITIONAL PRETRIAL MOTIONS AND TO CONTINUE TRIAL</b>
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**I. INTRODUCTION**

Defendant has filed a motion to enlarge time for pretrial motions and continue the trial (Doc. #16). This brief supports that motion.

## **II. ARGUMENT**

Defendant supports his motion by relying on the familiar factors set forth in *Armant v. Marquez*, 772 F.2d 552, 556-557 (9<sup>th</sup> Cir. 1985) which must be considered as follows: *Diligence*, *Usefulness*, *Inconvenience* and *Prejudice*. *Id.* (Emphasis original).

Defendant has been diligent. He filed the pre-trial motions he was able to file with the discovery he was furnished. However, the most recent discovery, some of which was not received until after the discovery deadline, is extensive. This in turn shows how a continuance will be useful since extra time will allow for a much needed follow-up defense investigation. In terms of inconvenience there appears to be none to witnesses on either side. Granted, the Court's schedule is interrupted, but even there additional investigation may result in the trial being altogether unnecessary.

On the prejudice prong. Defendant will suffer if additional time is not granted. At this point we have no forensic reports on defendant's computer or his cell phone. There is also a CD we are unable to open; and although the discovery says that the victim (A.J.) was subjected to a toxicology screen at the hospital we don't have those results, even though other medical reports were provided.

And one final point, defendant has filed a motion to dismiss for failure to state an offense. It would substantially aid the progress of this case to have that motion resolved as an initial matter. If, as we contend, defendant is not subject to a

mandatory penalty of life in prison plea negotiations and the potential for disposition without trial would be greatly enhanced.

### **III. CONCLUSION**

WHEREFORE, the defense prays the Court will grant the additional time requested.

RESPECTFULLY SUBMITTED March 2, 2011.

/s/ Michael Donahoe  
MICHAEL DONAHOE  
Senior Litigator  
Counsel for Defendant

**CERTIFICATE OF SERVICE**  
**L.R. 5.2(b)**

I hereby certify that on March 2, 2011, a copy of the foregoing document was served on the following persons by the following means:

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1. CLERK, UNITED STATES DISTRICT COURT

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